

**WEST VALLEY CITY  
BOARD OF ADJUSTMENT  
MINUTES**

**August 6, 2014**

This meeting was called to order at 6:01 p.m. by Chairperson Necia Christensen at 3600 Constitution Boulevard, West Valley City, Utah.

**WEST VALLEY CITY BOARD OF ADJUSTMENT MEMBERS**

Russell Moore, Scott Spendlove, Sandy Naegle, William Whetstone, and Necia Christensen

**Those Absent:**

**WEST VALLEY CITY PLANNING DIVISION STAFF**

Steve Lehman, Brock Anderson, and Nichole Camac

**WEST VALLEY CITY LEGAL DEPARTMENT**

Brandon Hill, Assistant City Attorney

**AUDIENCE:**

Approximately twenty-four (24) persons were in the audience.

## **NON CONFORMING USE**

**B-9-2013**

**Maria Peck**

**3795 South 5600 West**

**R-1-8 Zone**

### **REQUEST:**

Ms. Maria Peck, has filed an application with the West Valley City Board of Adjustment requesting a non-conforming use determination in order to continue keeping livestock on the property noted above.

This application was originally scheduled for December 2013. It was continued at the request of the property owner to provide more time for research and to gather additional information.

**WEST VALLEY CITY GENERAL PLAN** recommends residential office uses.

### **BACKGROUND:**

- ☐ The subject property is located at 3795 South 5600 West. It is also known as Parcel Number 14-36-151-013. It is not part of a formal subdivision and is bordered on the north, east and south by existing residential uses. Property to the east is zoned agriculture.
- ☐ This application is being presented to the Board of Adjustment at the request of the property owner. A citation dating back to 2013 was issued by the City's Ordinance Enforcement Division. Subsequent to the original citation, the case was closed as the animals were removed from the property for a time. Staff is unsure how long the animals were removed from the property.
- ☐ The request before the Board is to review the property and determine the non-conforming status of the existing and future right to house animals. Prior to this application, staff was not aware of any neighbor concerns regarding the keeping of animals. The subject property is approximately 2.3 acres in size.
- ☐ The subject property was zoned R-2-8 at the time of West Valley City's incorporation. According to a 1965 County zoning map, the subject and surrounding properties were zoned R-2A. According to the 1965 County Zoning Ordinances, the R-2A zone was used primarily for low density housing. Staff is unsure why the "A" designation is attached. Nothing in the zoning ordinance indicates that the property would be eligible for animals.
- ☐ At staff's direction, Ms. Peck contacted the previous property owner to determine when animals would have been introduced on this property. As a result of this conversation,

the applicant has submitted an affidavit from Marlene Pinkney. The affidavit states that since the Pinkney's owned the property dating back to 1958, animals have been kept on this property. Staff has attached this affidavit to the Board's packet.

- ☐ Other than this one letter, staff is not aware of any other attempts to seek out other residents to substantiate whether animals have been here subsequent to Ms. Peck's purchase of the property.
- ☐ Staff did receive one letter in complaint about the use of the property. The letter attached as part of this application addresses the many nuisances from animals being kept on this property and from those using the gate at the north end of Claudia Street to access the field where the animals are being kept. Although these are valid complaints, they will need to be dealt with through the City's Community Preservation Department and not through this venue.
- ☐ Generally, the size of the property is a historical indication that agricultural uses could have existed on the property in question. Properties along 5600 West were large and deep which is typical of what you would have found in the old Hunter farming community.

#### **ORDINANCE SUMMARY:**

Section 7-18-106(3) of the West Valley City Land Use Development and Management Act reads:

(3) Non-conforming Use of Land. A non-conforming use of land lawfully existing on the effective date of this Chapter may be continued provided such non-conforming use shall not be expanded or extended into any other open land, except as otherwise provided in this Chapter. If the non-conforming use is discontinued for a continuous period of more than one year it shall constitute an abandonment of the use and any future use of such land shall conform to the provisions of the zone in which it is located.

- ☐ The applicant is not requesting an expansion of a non-conforming use. They are requesting a determination that the existing use, i.e., the keeping of animals be allowed to continue on this property.

**Steve Lehman presented the application.**

**Discussion:** The Board of Adjustment had no questions for staff.

**Applicant:**

Maria Peck  
3795 S 5600 W

**Maria Peck**

Maria Peck stated that she purchased this property in 2008 primarily because it was listed as animal property and she wanted to raise horses. Necia Christensen asked if animals have always been on the property. Ms. Peck replied yes and added that this is a large lot that has always been designed and used for the keeping of animals. Mr. Spendlove asked if the citation the applicant received was regarding animals. Steve replied yes.

**Marlene Pinkney**

**3795 S 5600 W**

Ms. Pinkney indicated that she is the original property owner and purchased the property in the 1950's. She indicated that there were always animals kept on the property which used to include horses, cows, chickens, turkeys, etc. She indicated the keeping of animals has never been an issue and was unaware that the zoning for the lot ever changed. Russell Moore asked if the lot was ever leased to an individual to keep horses. Ms. Pinkney replied no.

**Juan Carlos**

**3844 S Alice Way**

Juan Carlos stated that he used to own horses and they were once kept on this property. He indicated they are now in Arizona but he appreciated the ability to keep them in Utah when he could.

**Dave Shopay**

**3808 Claudia Street**

Dave Shopay stated that he doesn't have any problems with the neighbors but he is concerned about access into the property. He indicated there is a great deal of traffic that comes up and down his street to access the property and many neighbors have experienced a lot of damage from this traffic to their homes, property, and vehicles. He indicated that he would request that access be granted from 5600 W to prevent these concerns. Mr. Shopay indicated that the property should also be better maintained and stated that currently it has overgrown weeds, broken down cars, bad smells, etc.

**Charles Peck**

**3795 S 5600 W**

Charles Peck stated that the old vehicle on the property belongs to his friend and he will ensure that this is removed as soon as possible. He indicated that his family will also address all maintenance problems and make sure the property is taken care of. Russell Moore indicated that the vehicle cannot legally be stored on the property if it is not licensed and registered.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Ms. Naegle moved for approval.

Mr. Whetstone seconded the motion.

**Discussion:** Scott Spendlove stated that it appears that there has been a continuous animal use on the property. He indicated that he would recommend that staff help address the issues brought forward by the neighbors and ensure that the property is cleaned up and continually maintained. Russell Moore stated that the affidavits received by neighbors in the area as well as the evidence provided by the applicant seem to clearly indicate a continuous animal use on the property for many years.

A roll call was taken.

Mr. Moore	Yes
Mr. Spendlove	Yes
Ms. Naegle	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

**Motion Carries - B-9-2013– Unanimous Vote**

## **VARIANCES**

**B-5-2014**

**Rushton Variance**

**3912 South 5200 West**

**R-1-8 Zone**

### **REQUEST:**

Mr. Ray Olsen, representing the property owner, Allan Rushton, has filed a request with the West Valley Board of Adjustment seeking a variance from Section 7-6-305(1) of the West Valley City Code. This section requires that the frontage of a lot in the R-1-8 zone be 80 feet. The applicant is requesting a frontage variance 1.42 feet for the purpose of adjusting mutual property lines.

### **BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- ☐ The subject property is known as parcel 14-36-328-029. This parcel is not part of a formal subdivision, but is consistent in size and shape with other parcels fronting 5200 West. At the present time, a single family dwelling occupies the site. According to Salt Lake County records, the dwelling was constructed in 1941.

- ☐ Mr. Olsen, who resides on the property to the south, approached staff about the possibility of doing a lot line adjustment between his property and Mr. Rushton's property to the north (the subject property). Mr. Olsen explained that the purpose for the lot line adjustment would be to clean up property discrepancies and to provide a space between his home and Mr. Rushton's property line. At the present time, the setback from Mr. Olsen's home is less than 1-foot to property line.
- ☐ Staff explained that the lot line adjustment is reasonable and make sense from a planning stand point. However, before submitting an application to adjust the property line, a variance would be needed for Mr. Rushton's property. At the present time, the frontage of Mr. Rushton's property is 84.73 feet. The lot line adjustment would be shifted to the north by 6.15 feet, thus leaving 78.58 feet, leaving the property short of the 80-foot requirement by 1.42 feet.
- ☐ The main reason the lot line adjustment is important to Mr. Olsen is that some of his underground utilities are located on property that is not part of parcel. While he has had a long standing agreement with the property owner to the north, at one point the home may sell and
- ☐ Staff explained the variance criteria and that the Board of Adjustment would need to evaluate the criteria in relation to the specifics of the property. The applicants believe that the variance criteria is satisfied and subsequently made application to the Board.
- ☐ As noted earlier, there is an existing dwelling on Mr. Rushton's property. Fortunately, the placement of this dwelling is approximately 20 feet from where the new property line would be located if the variance was approved. In addition, all other requirements of the R-1-8 zone will be satisfied.
- ☐ Should the Board of Adjustment approve the variance, the applicant will be required to submit a lot line adjustment application.

☐ **ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires that the minimum frontage of a lot in the R-1-8 zone be 80 feet.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally

apply to other properties in the same zoning district.

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.

4. The variance will not substantially affect the general plan and will not be contrary to the public interest.

5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

**Steve Lehman presented the application.**

**Discussion:** Scott Spendlove asked what utilities are located on the neighboring property. Steve replied that he believes there is a sewer line which is one of the primary concerns. Mr. Whetstone asked where the property lines will be adjusted. Mr. Lehman indicated on the map how the lines will be corrected.

**Applicant**

Ray Olsen  
3916 S 5200 W

**Ray Olsen**

Ray Olsen stated that a survey was conducted and the description of the property didn't match the fence lines which is what residents have always used as an indicator of the property line. He indicated that his sewer line runs along his neighbor's property and this is something that he would like to get corrected. Mr. Olsen stated that granting this variance will get the legal description of properties in sync with the fence lines, will put the utilities on the correct properties, and is a way to solve concerns amicably with the neighbors.

**1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. Olsen stated that the variance will allow him to adjust the property line increasing the setback from his home to a new property line thus providing a greater separation for fire safety. He indicated that it will allow him the ability to keep existing utility lines on his own property as well.

**2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Olsen stated that his property is encumbered with utility lines serving an adjacent home. He indicated that he isn't aware of any other properties that have this condition. Mr. Olsen stated that although not attached to his property, he believes there are special circumstances because the adjacent home sits less than 1 foot from the property line.

**3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mr. Olsen stated that this variance would allow a greater separation from the home to a new property line and would create enough space for the utilities to be located and maintained off of his property, thus allowing him to better enjoy his property.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mr. Olsen stated that zoning was not in place when these homes were built, nor were there frontage requirements. He indicated that the width of his property will be slightly less than 80 feet which would not be contrary to the public interest.

**5. The spirit of the zoning ordinance is observed and substantial justice done.**

Mr. Olsen stated that the spirit of the zoning ordinance is observed because the variance will actually allow him to better comply with the zoning ordinance.

**Discussion:** Russ Moore asked who the property was purchased from. Mr. Olsen replied it was purchased from the bank. He indicated that there was no survey conducted at that time.

**Alan Rushton  
3912 S 5200 W**

Alan Rushton stated that he has lived on the property for the majority of his life. He indicated that his grandfather purchased the property in 1903. He stated that the surveys conducted in the 1930's were done east to west as opposed to north and south as they are done now so trying to figure out where property lines go has been difficult and confusing. Mr. Rushton indicated that the property lines were assumed to match the fence lines as far back as the 1970's. He stated that he has no problem or concern with this layout.

**John Betts  
3920 S 5200 W**

Mr. Betts stated that he lives just south of these homes. He indicated that this is a



common problem in the neighborhood and the Board of Adjustment will likely be seeing similar cases come forward. He indicated that the residents are trying to make legal descriptions and fence lines match and do so amicably.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Spendlove moved for approval.

Mr. Moore seconded the motion.

**Discussion:** Necia Christensen stated that the only criteria she wasn't sure on was the first. She stated that after hearing from the residents she understands that this wasn't anyone's fault and was not the property owners doing. Scott Spendlove stated that nothing matches the legal description, the utilities are located on the wrong properties, and this was all done incorrectly many years ago.

A roll call was taken.

Mr. Moore	Yes
Ms. Naegle	Yes
Mr. Spendlove	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

**Motion Carries - B-5-2014– Unanimous Vote**

**B-6-2014**

**Olsen Variance**

**3916 South 5200 West**

**R-1-8 Zone**

**REQUEST:**

Mr. Ray Olsen, has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305(1) of the West Valley City Code. This section requires that the minimum side yard setback (opposite the garage side) in the R-1-8 zone be 8 feet. The applicant is requesting a variance of 1.03 feet from the existing dwelling to what will be a new property line.

**BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- ☐ The subject property is known as parcel 14-36-328-030. This parcel is approximately .36 acres in size and is not part of a formal subdivision. According to Salt Lake County

records, Mr. Olsen's home was constructed in 1928. The placement of this dwelling is less than 1 foot from the north property line. At the time the single family dwelling was constructed, zoning did not exist in this part of the County.

- ☐ Mr. Olsen approached staff about the possibility of doing a lot line adjustment between his property and Mr. Rushton's property to the north. The purpose for the adjustment is to provide a greater setback between Mr. Olsen's home and the property line and to resolve some long time agreements between Mr. Olsen and Mr. Rushton.
- ☐ Mr. Olsen explained that the primary reason to adjust the property line is to provide a bigger setback to accommodate utility lines that run along the north side of Mr. Olsen's home. The main reason the lot line adjustment is important to Mr. Olsen is that some of his underground utilities are located on property that is not part of his parcel. While he has had a long standing agreement with the property owner to the north, at one point the home may sell and it would be better to resolve this matter now than in the future.
- ☐ Staff explained the variance criteria and that the Board of Adjustment would need to evaluate the criteria in relation to the specifics of the property. After discussing this matter with the applicant, staff explained that there are good reasons as to why the variance should be granted, but that the Board would need to evaluate each question as it relates to the specifics of this case.
- ☐ Should the Board of Adjustment approve the variance, the applicant will be required to submit a lot line adjustment application.

☐ **ORDINANCE SUMMARY:**

Section 7-6-305(1) of the West Valley City Land Use Development and Management Act requires the minimum side yard setback (opposite the garage side) to be 8 feet from the property line.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the

public interest.

5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

**Steve Lehman presented the application.**

**Discussion:** The Board of Adjustment had no questions or concerns.

**Applicant**

Ray Olsen  
3912 S 5200 W

**Ray Olsen**

Mr. Olsen had nothing further to add and indicated the criteria are similar to the previous application.

1. **Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. Olsen stated that the variance will allow him to adjust the mutual property line with his neighbor Mr. Rushton to the north. The unreasonable hardship is that this home was placed too close to the property line when it was constructed. There is no safety zone between his home and the next door neighbor and some of his utilities run along the south side of Mr. Rushton's property.

2. **There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Olsen stated that his property has essentially a zero setback. Most if not all other properties in this area have a building setback of 6 feet or more. There are utilities necessary for his home that run on property that he doesn't own.

3. **Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mr. Olsen stated that this variance would allow a greater separation from the

home to a new property line and would create enough space for the utilities to be located and maintained on his own property.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mr. Olsen state that zoning was not in place when these homes were built. He stated that although that was the case then, there are setback standards now and he is trying to bring this dwelling more into compliance than it has been in the past. He added that he will also be able to keep his own utility lines on his property.

**5. The spirit of the zoning ordinance is observed and substantial justice done.**

Mr. Olsen sated that the spirit of the zoning ordinance is observed because the variance will actually allow the property to better comply with the zoning ordinance.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Spendlove moved for approval.

Mr. Whetstone seconded the motion.

**Discussion:** There was no further discussion.

A roll call was taken.

Mr. Moore	Yes
Ms. Naegle	Yes
Mr. Spendlove	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

**Motion Carries - B-6-2014– Unanimous Vote**

**B-7-2014**

**This item has been withdrawn.**

**B-8-2014**  
**Smith Variance**  
**3870 South 4000 West**  
**R-1-8 Zone**

**REQUEST:**

Steve Young, representing Wanda Smith, has filed a request with the West Valley City Board of Adjustment seeking a variance from Section 7-6-305(1) & (4). This section requires that the minimum frontage for a cul-de-sac lot in the R-1-8 zone be 75 feet. The applicant has submitted a request to reduce the frontage of lots 10-14 to 69.30, 69.27, 70.59, 64.27 and 72.25 feet respectively.

**BACKGROUND:**

**WEST VALLEY CITY GENERAL PLAN** recommends low density residential land uses.

- ☐ The subject property is known as Parcel No. 15-32-301-021. It is tucked back off of 4000 West at approximately 3870 South. The property is currently vacant, but the applicant has submitted a subdivision application for a new single family subdivision.
- ☐ The preliminary plat for this subdivision was reviewed by the City Planning Commission on June 25, 2014. During this hearing, property owners to the northeast of the subject property expressed concern that their existing right-of-way may be impacted by the development. They expressed to the Commission that an existing dirt right-of-way exists along the north property line and provides access to their parcels which are not included within the boundaries of the subdivision. The Planning Commission granted preliminary approval subject to this matter being resolved.
- ☐ Subsequent to the meeting, staff researched County records and found a right-of-way and access easement agreement recorded in August 2012. This agreement allowed access over a 22-foot wide piece of property along the north portion of the future subdivision. While the access easement exists, the right-of-way has never formally been improved and is a dirt road.
- ☐ Subsequent to the Planning Commission's approval, the applicant approached the properties owners who use this right-of-way to determine if they would be willing to consider a better shorter route to their homes. They agreed that a shorter access on pavement would be much better than the existing situation so the developer went to work designing a hybrid flag lot.
- ☐ The proposed design is that lots 10-14 would be cul-de-sac lots and that a 24-foot stem would extend to the northeast thus providing access to the three parcels outside of the subdivision. Taking 24 feet out of the cul-de-sac lots however, would mean that the frontage requirement for these lots could not be met.

- ☐ The applicant approached staff about the possibility of a variance on those lots considered to be within the cul-de-sac. Staff explained the variance process, and suggested that consideration by the Board would take into account the better design. It is staff's opinion that the proposed design is the best approach for the existing residents, and for future residents who would not have to deal with an access easement in their back yard.
- ☐ Staff explained the variance criteria, and evaluated the options with the developer. Based on these discussions, a decision was made to pursue Board of Adjustment relief.
- ☐ Should the Board of Adjustment approve the variance, the applicant will modify the plat to reflect these frontages. The developer will be able to continue moving forward through the subdivision process.

☐ **ORDINANCE SUMMARY:**

Section 7-6-305(1) & (4) of the West Valley City Land Use Development and Management Act requires that the minimum frontage of a lot in the R-1-8 zone be 80 feet. It also provides for a reduction of 5 feet for lots considered to be cul-de-sac lots.

The West Valley City Land Use Development and Management Act Section 7-18-107 outlines the standards or conditions for approving a variance. The Board of Adjustment may grant a variance only if:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

According to Williams, American Land Planning Law (Volume 5, Criteria for the Validity of Variances, pages 131 and 133 et.seq.) there is a presumption against granting a variance and it can only be granted if each of the standards are met.

In Wells v. Board of Adjustment of Salt Lake City, the Utah Court of Appeals held that a Board's decision to grant a variance would be illegal if the required statutory findings were not made.

**Steve Lehman presented the application.**

**Discussion:** Necia Christensen asked if the other access easement will be abandoned. Steve replied yes. He indicated that the property owners can still use it but there won't be a need. Sandy Naegle asked if the property next to the existing access easement along 4000 W will still use the access road to their driveway. Steve replied yes. Mr. Moore asked how garbage trucks are able to maneuver the current access road. Steve replied that he has heard the garbage truck actually backs into it. He indicated that the applicant will ensure garbage pickup will be okay with the new easement.

**Applicant**

Steve Young  
10447 Culmination Street  
South Jordan, UT

**Steve Young**

Mr. Young stated that the existing access road is owned by the Smith's. He indicated that it costs a lot of extra money to put this new lane in but it will be much safer and will be built under City road standards that will be better quality. He indicated that the lane will be owned by the property owners who will be using it. The existing lane will be abandoned and the property owners of the new homes will have possession of this property. Mr. Young stated that the owners to the east have already signed agreements to the new lane and agreed to abandon the existing one.

- 1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.**

Mr. Young state that the purpose for the City's ordinances is to promote health, safety and welfare of the citizens. The unreasonable hardship is that trying to sell lots with a private access easement running through them would be very difficult. In addition, new owners of these lots would be burdened with payment of taxes for property that they could not use.

- 2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district.**

Mr. Young stated that the recorded access easement is special to this property. Most other properties in this area are platted lots that have access to a dedicated street system.

- 3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zoning district.**

Mr. Young stated that he believes that home owners being able to utilize their entire lot is an enjoyment of their property right. If the access easement were to stay in place, they would lose a substantial portion of their property and would be subject to paying taxes for property that they cannot use.

**4. The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Mr. Young stated that granting the variance actually supports the general plan by removing an access road that is not improved nor maintained. It will not be contrary to the public interest as the residents who use this access road have agreed to the new subdivision design.

**5. The spirit of the zoning ordinance is observed and substantial justice done.**

Mr. Young stated that approval of the variance will replace an unimproved access road with a new access that will be paved and maintained.

**Discussion:** Mr. Young stated this was worked out with the property owners and everyone was okay with the proposal. He added that the garbage pickup trucks were also happy with the improvement. Ms. Christensen asked who will maintain the road. Mr. Young stated that he will install it as part of the subdivision but the owners to the east, who will be using the lane, will be required to maintain it since they will actually own it. Mr. Moore asked if the lane will continue to the driveways of the homeowners to the east. Mr. Young stated it will be paved to the property line of the subdivision. Mr. Moore asked if there are any utilities that will continue on the existing access road. Mr. Young replied that the sewer line is there and will be continued.

Mr. Spendlove asked why the City isn't responsible for the maintenance of the easement. Steve replied that the lane is private since it won't meet City requirements and indicated this is more of a glorified driveway. He added that this is very rare. Steve stated that the road base, etc. won't be inspected by the City but he feels confident Mr. Young will do a good job. Mr. Spendlove stated that he would be concerned about the property changing hands and people forgetting that they are in charge of maintaining the road. Mr. Young stated that the road will be done professionally and will not deteriorate. Mr. Whetstone asked if the access road could be done by eliminating a lot. Mr. Young replied no.

Mr. Spendlove clarified this is a variance on a proposed subdivision and final approval hasn't been granted by the City yet. Steve replied yes.

There being no further discussion regarding this application, Chairperson Christensen called for a motion.

Mr. Moore moved for approval.



Mr. Whetstone seconded the motion.

**Discussion:** Ms. Christensen stated that road used to go very far and was once traversed by school buses. She indicated it has existed for a very long time and is narrow and in bad condition and the new lane will be an upgrade. The Board of Adjustment briefly reviewed the 5 criteria:

- 1- Sandy Naegle stated that tax isn't monetary in her mind. She added that it doesn't seem fair that property owners can't use all of the property they own because of an existing easement.
- 2- Russell Moore stated that property owners need access to their properties. He indicated that this is important.
- 3- Necia Christensen stated that people should be able to utilize their entire lot and not have a narrow dirt road in the backyard.
- 4- Sandy Naegle stated that neighbors are in support of this resolution so it isn't negatively affecting the City.
- 5- Necia Christensen stated that all roads and driveways should be paved.

A roll call was taken.

Mr. Moore	Yes
Ms. Naegle	Yes
Mr. Spendlove	Yes
Mr. Whetstone	Yes
Chairperson Christensen	Yes

**Motion Carries - B-8-2014– Unanimous Vote**

**OTHER**

The minutes from **July 2, 2014** were **approved**.

There being no further business the meeting adjourned at 7:12 p.m.

---

Nichole Camac, Administrative Assistant